

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2826

SPONSOR: Judiciary Committee and Senator Lynn

SUBJECT: Public Records

DATE: April 13, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u> </u>	<u> </u>	<u>FT</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AGG</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill creates a public records exemption for certain information relating to the insurance claims data exchange. Limited disclosure is authorized for purposes of locating a non-custodial parent who has a child support obligation or for establishing, modifying, or enforcing an obligation.

As this bill creates a new public records exemption, passage requires a two-thirds vote of each house of the Legislature.

This bill creates section 409.25661 of the Florida Statutes.

II. Present Situation:

Sources of Payment for Child Support Enforcement

The Department of Revenue is authorized to pursue child support payments through the following methods:

- Garnishment of wages, through income deduction orders;¹
- Garnishment of IRS refund checks;²
- Lien placement on title of vehicle, vessel or mobile home;³
- Lien placement on real property;⁴
- Levy on certain financial accounts;⁵

¹ s. 61.1301, F.S., and s. 409.2574, F.S.

² s. 61.17(3), F.S.

³ s. 409.2575, F.S. and s. 742.08, F.S.

⁴ s. 742.08, F.S.

- Worker's compensation;⁶
- Unclaimed property;⁷ and,
- Lottery winnings;⁸

Confidentiality Authority for Department of Revenue

Current law provides that information concerning applicants for or recipients of Title IV-D child support services is confidential and exempt from public records requirements. Limited disclosures are authorized for:

- The administration of the plan or program approved under certain parts of the Social Security Act;
- Any investigation, prosecution, or criminal or civil proceeding connected with the administration of any such plan or program;
- The administration of any other federal or federally assisted program which provides service or assistance in cash or in kind, directly to individuals based on need; or,
- Reporting to an appropriate agency or official information on known or suspected instances of physical or mental injury, child abuse, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of support enforcement.⁹

Public Records Exemptions

Florida Constitution: Exemptions from Public Records and Public Meetings Requirements

Article I, s. 24(c) of the Florida Constitution authorizes the Legislature to create exemptions from public access and public meetings provisions of the law and constitution. Any law that creates such an exemption must:

- State with specificity the public necessity that justifies the exemption;
- Be no broader than necessary to comport with the stated public necessity; and
- Relate only to the exemptions and their enforcement.

Sunset and Review of Exemptions

The Open Government Sunset Review Act of 1995 specifies additional conditions under which a public records or public meetings exemption may be created.

By law, an exemption may be created or expanded only if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or

⁵ s. 409.25656, F.S.

⁶ s. 61.14 (8), F.S.

⁷ s. 409.25658, F.S.

⁸ s. 24.115, F.S.

⁹ s. 409.2579 (1), F.S.

- Protects information of a confidential nature concerning entities, including but not limited to a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁰

The Open Government Sunset Review Act of 1995 provides for the automatic five year review and repeal of an exemption provided under the Public Records Act.¹¹ If the Legislature intends to reenact the new exemption or the substantial amendment of an existing exemption, the Legislature must act to reenact it in the fifth and final year of the exemption period; otherwise, it stands repealed on October 2 of that year.

III. Effect of Proposed Changes:

This bill creates a public records exemption for information obtained by the Department of Revenue from insurers, only for those persons who do not owe past due support.

This exemption authorizes disclosure of the information for the purpose of locating a non-custodial parent who has a child support obligation or for establishing, modifying, or enforcing a child support obligation.

Legislative intent provides that it is a public necessity that insurance claims information reported to the department be held confidential and exempt from disclosure because it is personal and private. Additionally, disclosure could lead to identity theft, fraudulent activity concerning a claim, unauthorized solicitation by an attorney, unauthorized practice of law and unfair competition by revealing insurance claims experience.

This bill takes effect on the same day that SB 160 (linked) takes effect, if adopted in the same legislative session, or an extended session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁰ Section 119.15(4)(b), F.S.; While the standards in the Open Government Sunset Review Act appear to limit the Legislature in the process of review of exemption, one session of the Legislature cannot bind another. *See Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974). The Legislature is only limited in its review process by constitutional requirements. In other words, if an exemption does not explicitly meet the requirements of the act, but falls within constitutional requirements, the Legislature cannot be bound by the terms of the Open Government Sunset Review Act. Further, s. 119.15(4)(e), F.S., makes explicit that:

... notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

¹¹ *See* s. 119.15, F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill provides for a public records exemption for information about liability claims. Some of these claims may be finalized by settlement, and the settlements may contain confidentiality agreements, preventing either party from disclosing certain information about the case. Without an exemption, parties may not be encouraged to settle.

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.